REMARKS

The Office Action mailed April 3, 2008, has been received and reviewed. Prior to the present communication, claim 1 was pending in the subject application. Claim 1 was rejected under 35 U.S.C. § 103 as being unpatentable over Applicant-cited art No. 11 (hereinafter the "Weinert reference") in view of Geographic Variations in Utilization Rates in Veterans Affairs Hospitals and Clinics by Ashton (hereinafter the "Ashton reference") and in further view of Access to Physicians in Underserved Communities in Canada: Something Old, Something New by Chan (hereinafter the "Chan reference"). Reconsideration of the application in view of the above amendments and the following remarks is respectfully requested.

Rejections based on 35 U.S.C. § 103(a)

Title 35 U.S.C. § 103(a) declares, a patent shall not issue when "the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains." The Supreme Court in *Graham v. John Deere* counseled that an obviousness determination is made by identifying: the scope and content of the prior art; the level of ordinary skill in the prior art; the differences between the claimed invention and prior art references; and secondary considerations. *Graham v. John Deere Co.*, 383 U.S. 1 (1966).

To support a finding of obviousness, the initial burden is on the Office to apply the framework outlined in *Graham* and to provide some reason, or suggestion or motivation found either in the prior art references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the prior art reference or to combine prior art reference teachings to produce the claimed invention. See, *Application of Bergel,* 292 F. 2d 955, 956-957

(1961). Thus, in order "[t]o establish a *prima facie* case of obviousness, three basic criteria must be met. First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. Second, there must be a reasonable expectation of success [in combining the references]. Finally, the prior art reference (or references when combined) must teach or suggest all the claim limitations." *See* MPEP § 2143. Recently, the Supreme Court elaborated, at pages 13-14 of *KSR*, it will be necessary for [the Office] to look at interrelated teachings of multiple [prior art references]; the effects of demands known to the design community or present in the marketplace; and the background knowledge possessed by [one of] ordinary skill in the art, all in order to determine whether there was an apparent reason to combine the known elements in the fashion claimed by the [patent application]." *KSR v. Teleflex*, 127 S. Ct. 1727 (2007).

Claim 1 has been rejected under 35 U.S.C. § 103(a) as being unpatentable over the Weinert reference in view of the Ashton reference and in further view of the Chan reference. As the Weinert, Ashton, and Chan references, either alone or in combination, fail to teach or suggest every limitation of amended claim 1, Applicants respectfully traverse this rejection.

Independent claim 1, as currently amended, recites a method in a computing environment for effecting a controlled, recurring assessment of a care episode and service utilization patterns associated with a locale, the locale including a plurality of corresponding institutions, which comprises, in part, transforming distance values, the distance values measured in physical distance or elapsed time, the physical distance or elapsed time measured from a location at which inception of a clinical event occurred to a health facility in the catchment area where appropriate care is secured, and transforming population values, using a Box-Cox

transform, for the locale where each care episode originates, the population values measured in persons or persons per square mile, wherein the clinical indicators *assess quality of health services in the locale*, the quality assessment including identifying under-resourced locale health care needs, monitoring prevention of medical complications, and comparing performance of the locale to other communities. As stated in the Specification, embodiments of the present invention provide policy makers and health-care providers with the tools to determine, among other things, quality assessments such as:

- How does the low birth weight rate in my locale compare with the national average?
- What can the rate of new cancer management encounters exceeding fourteen days tell me about the adequacy of oncology care in my community?
- Does the admission rate for diabetes complications in my community suggest a problem in the provision of appropriate outpatient care to this population?
- How does the admission rate for congestive heart failure vary over time and from one region of the country to another?

See Specification, at p. 4, ¶ [0012]. Thus, embodiments of the present invention provide effective management of health-care services in metropolitan, suburban, and rural areas.

Applicant respectfully traverses the rejection because even combining the references in the manner suggested by the Office, the cited references still fail to teach or disclose every element of the amended independent claim. Essentially the references involve two healthcare studies—an access study (the Chan reference), and a utilization study (the Ashton reference)—and a statistical analysis for rurality (the Weinert reference). Combining the references in the manner suggested, the result would be a healthcare study that uses the particular rurality measure of the Weinert reference. But the healthcare study of the combination is distinct

from the spirit of the present invention and fails to disclose limitations required by the amended independent claim.

As emphasized by the specification, the present invention involves an "easy-to-use and inexpensive screening tool." *Specification*, at p. 3, ¶ [0010]. The system of the present invention is easy-to-use and inexpensive because it calculates risk-adjusted indicators using available data. *See id.* Further, the system of the present invention can be used as a screening tool because it provides for recurring monitoring of locale-specific healthcare services. *See, inter alia, id.* The combination of the Weinert, Ashton, and Chan references fails to teach or suggest the required system for at least three reasons. First, the combination cannot provide for screening, using recurring monitoring, as required by the claim. By definition, the comprehensive studies disclosed in the Ashton and Chan references involve extensive after-the-fact analyses. The after-the-fact analyses would have no efficacy as a recurring monitoring tool because of the time lag inherently necessitated by the comprehensive system-wide studies.

Second, the system-wide studies of the combination of the Weinert, Ashton, and Chan references fail to teach or suggest the locale-specific assessment required by the independent claim 1. Instead, the combination teaches a system-wide approach (e.g., throughout Canada or throughout the VA system) for addressing under-served or under-utilized areas. The system-wide analysis cannot, as required by the claim, identify particular under-resourced needs in a particular locale.

Finally, the combination of the Weinert, Ashton, and Chan references actually teaches away from the spirit of the present invention. The present invention, as defined by independent claim 1, involves a flexible and agile tool that "provides a window into [a] community." *Specification*, at p.3, ¶ [0010]. The present invention provides a "screening tool"

that "provide[s] initial information about potential problems in [a] community that may require further, and more in-depth analysis." *Id.* at p. 4, ¶ [0012]. The approach of the present invention uses multifactorial flexibility in that the invention, as claimed in independent claim 1, does not presume what services or providers are. Instead, the assessment of the present invention uses transactional records of actual services. The present assessment does not employ a headcount of persons within a geography who are capable of giving service. The combination suggested by the Office is exactly the type of rigid, in-depth, analysis that the present invention is not. The flexibility of the assessment of the present invention allows it to ascertain under-utilization or over-utilization associated with the transactional records—quantifying "remoteness" even where that "remoteness" or "rurality" occurs in inner-city populations. In other words, as claimed in independent claim 1, the assessment of the present invention provides a flexible approach instead of the rigid combination suggested by the Office.

Accordingly, it is respectfully submitted that the Weinert, Ashton, and Chan references, either alone or in combination, fail to teach or suggest each element of independent claim 1, as amended herein. Thus, claim 1 is patentable over the Weinert, Ashton, and Chan references. Therefore, withdrawal of the 35 U.S.C. § 103(a) rejection of this claim is respectfully requested.

CONCLUSION

For at least the reasons stated above, and upon entry of the amendments included herein, claim 1 is believed to be in condition for allowance. As such, Applicant respectfully requests withdrawal of the pending rejection and allowance of claim 1. If any issues remain that would prevent issuance of this application, the Examiner is urged to contact the undersigned by phone prior to issuing a subsequent action.

It is believed that no fee is due in conjunction with the present communication. However, if this belief is in error, the Commissioner is hereby authorized to charge any additional amount required to Deposit Account No. 19-2112, referencing attorney docket number CRNI.103792.

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Respectfully submitted,

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